

CITY OF AUBURN



Request for Proposals For Pest Control Services for City of Auburn

June 2012

City of Auburn
1225 Lincoln Way
Auburn, CA 95603
530-823-4211

Date of Issuance: June 27, 2012
Submittal Deadline: July 27, 2012
at 3:00 p.m.

A. Background

The City of Auburn (City) is soliciting bid offers for qualified, pesticide applicator (operator) businesses.

It is the intent of the City to solicit bid offers for qualified, pesticide applicator (operator) businesses who are duly registered and licensed in the State of California to render quality pest control services to the City in order to provide a pest free environment for employees, clients and visitors to the offices, buildings and/or grounds of the various City locations stated in the specifications. Locations may, however, be added or deleted during the term of this contract and extensions thereof.

B. Schedule for RFP Process

| | |
|------------------------------------|---|
| Wednesday, June 27, 2012 | Request for Proposal Released |
| Monday, July 16, 2012 at 9:00 AM | Optional Pre-Proposal Site Visit |
| Thursday, July 19, 2012 by 3:00 PM | Questions from Proposers Due |
| Tuesday, July 24, 2012 | City Responses from Questions Due |
| Friday, July 27, 2012 by 3:00 PM | Request for Proposals Due |

* The optional pre-proposal site visit will start at City Hall at 1225 Lincoln Way, Auburn, CA 95603 at 9:00 a.m. on Monday, July 16, 2012. Transportation between facilities will not be provided by the City.

C. Submission Process and General Conditions

1. Respondents should submit one (1) original and one (1) copy of the proposal to:

Ms. Bernie Schroeder
Director of Public Works
City of Auburn
1225 Lincoln Way
Auburn, CA 95603

2. Deadline for submitting proposal; Friday, July 27, 2012 at 3:00 p.m. to Room 8 at City Hall, 1225 Lincoln Way, Auburn, CA to the City Clerk.

3. All cost of preparation of proposals shall be borne by the respondents.

4. All proposals become the property of the City of Auburn. The City reserves the right to reject any and all submittals; to request clarification of information submitted; to request additional information from competitors; and to waive any irregularity in the submission and review process. None of the materials submitted will be returned to the bidder unless they are not submitted in a timely manner.

5. Proposals will become a public record and available for release to the public upon selection of a successful respondent and an agreement is reached.

D. RFP Addenda

Any changes to the RFP requirements and answers to submitted questions will be made by addendum and posted along with the original RFP on the City's website.

E. Information Resources

Question about this Request for Proposal shall be email to the following:

Dean Stalder

City of Auburn Public Works

Email: dstalder@auburn.ca.gov

Questions will not be answered that would tend to constitute an evaluation of a response being prepared or that might give an unfair advantage to a potential respondent. For additional information regarding the services to be provided, please review the Scope of Work. Except for the above named, potential respondents should not contact City of Auburn officials or staff regarding any aspect of this RFP. If such contact is made, the City reserves the right to reject the proposals.

F. Scope of Work

SERVICE: Contractor to provide an environment, free from, but not limited to, the following pests:

1. Spiders, cockroaches and beetles
2. Crickets, and other hoppers
3. Ants (all species) earwigs, sow bugs, silverfish and other crawling insects
4. Fleas and other biting insects
5. Wasps, hornets and other stinging insects nesting in the interior or exterior, up to a maximum height of two (2) stories.
6. Moths and other flying pests.
7. Weevils and other food pests.
8. Mice, rats and other rodents.

The pest control services shall be performed in all listed buildings, occupied or unoccupied, including, but not limited to, basements, crawl spaces, offices, storage areas/rooms, closets, baseboards, plumbing and heating pipes, shelves, elevators, walls/enclosures, kitchen, dining room, cafeteria, food preparation and storage areas, refuse containers and surrounding storage areas, offices, lavatory and shower areas hallways and lounge areas.

All Contractor personnel working in or around city facilities shall wear distinctive uniform clothing and identification.

The Contractor is responsible to brush down all spider webs from outside of all buildings.

The Contractor must perform a thorough inspection during every service. Following each scheduled service, the Contractor must submit a written report to the designated individual in the Public Works Dept. listing any and all areas that remain inaccessible for pest control service such as lockers, rooms, closets, etc.

Should the scheduled services not be totally effective, or interrupt institutional activities, the Contractor shall be required to provide necessary services at alternate times agreeable to the City facility, at no additional cost. Complaints and service requirements, including recall work required between scheduled services visits, must be handled within 24 hours after notification and will be at no additional cost to the City.

The contracted vendor(s) shall be responsible for furnishing all materials, transportation, labor, equipment, any and all services and materials necessary to perform pest control service, for both specified and unspecified sites at various City locations.

All pest control services shall be performed in accordance with Federal, State and Local rules and regulations presently established or may be established during the term of the contract. Any and all chemical product(s) used must be approved for its intended use, and applied in a manner consistent with regulations established by the State of California – Cal OSHA.

The contracted vendor(s) pest control service visits must be scheduled in advance as to not disrupt the normal operations of any department or division.

PERFORMANCE REQUIREMENTS: The Contractor is to use the proper equipment and material to render the services to ensure safety for all human life, livestock and the environment. It is to be clearly understood that the equipment and pesticides used by the Contractor for this contract are to be within safe and legal guidelines.

Before an application is made, the Contractor shall notify the Public Works Department designee of precautionary actions, if any, that may need to be taken.

Contractor shall not apply any pesticide product that has not been approved for the use by federal and state regulatory agencies. All pesticides used shall be non-flammable, secured when unattended and registered by the US Environmental Protection Agency and the State of California.

The Contractor shall be responsible for removing and disposing of all excess and/or unneeded chemicals, materials or equipment after the application is completed. The Contractor may not store chemicals or equipment on the facility site at any time.

Pesticide application shall be according to need, and not by a routine schedule unless it is part of a regular preventative pesticide treatment or maintenance program in areas determined to be at risk for infestation by insects or rodents by inspection at the onset of the program.

START-UP: The contract vendor shall be extended a 60-day grace period in order to eliminate pest problems that may have been present prior to the contract award. During this grace period, the facility will not process vendor complaints for failure to meet performance requirements of these specifications. This period shall give the Contractor sufficient time to start and thoroughly service all locations. The grace period will begin with the contract start date and continue for sixty (60) consecutive days.

If, within the sixty (60) day grace period, the pest control problem is determined to be on the increase and shows no improvement, the City reserves the right to terminate the grace period.

PRICING: Quotations shall be based on a fixed monthly price per facility to perform all pest control services as required to provide a pest free environment for each facility. Quotation must also specify how many service calls are included in this monthly fee. Additional requirements not related to regular service may be ordered at the hourly rate quoted on the bid form. This quote will remain firm for the life of the contract. City of Auburn will be afforded the benefit of any price reduction during the term of the contract.

LOCATIONS AND FREQUENCIES: This quote is for Pest Control Service at the locations and frequencies listed on Attachment A.

G. Proposal Process

The City intends to award a contract to the bidder who submits the proposal that is the most advantageous and the best value to the City, price and other factors considered, as determined by the City as its sole discretion. The lowest price proposal will not necessarily be selected as the best value to the City. Qualifications, experience, and the reference portion of the proposals as well as cost proposals will be evaluated to determine the proposal that provides the best value to the City.

The City reserves the right to accept proposals, award proposals and /or not award proposals to reject any and all proposals, to waive any informality in the proposals, and to accept the proposal that appears from all consideration to be in the best interest of the City

H. Vendor Qualifications and Experience

Proposals must include summary and definitive information regarding licenses, certifications, experience and qualifications of the proposing firm.

I. Professional Service Agreement

The successful bidder will be expected to enter into a Professional Services Agreement (PSA) with the City. The City's standard PSA has been provided in draft for review by prospective bidders. Bidders are not required to submit a signed copy of the City's PSA with their proposal, but are merely directed to review the PSA to ensure that all bidders understand the City's PSA requirements.

Bidders should clearly note in their proposal whether they take exemption to any of the PSA requirements, and should include a detailed explanation of the reason for the exemption and a counter-proposal or alternative suggestion(s) for the City's review. However, after review of any bidder's exceptions, the City reserves the right to reject any and all exceptions taken to the City's PSA.

The term of this agreement shall be for two (2) years. The City may elect to extend the agreement for an additional two (2) year period on the same terms and conditions, upon providing written notice to Contractor not less than thirty (30) days prior to expiration of the Agreement.

J. References

Provide a minimum of three (3) references for which your firm has provided services similar to those described by this RFP. References are to include: Name, Address, Contact, Title, Phone Number and Term of Contract.

K. Evaluation Criteria

The lowest price proposal will not necessarily be selected as the best value to the City. Qualifications and experience, and the reference portion of the proposals as well as cost proposals will be evaluated to determine the proposal that provides the best value to the City.

The criteria to be used in the evaluation of proposals are as follows:

1. Overall responsiveness to the Request for Proposal. Proposals must be neat, complete, and fully address the technical requirements of the RFP, costs, vendor qualifications, and references.
2. The bidders understanding of the City's requirements as evidenced by the bidder's proposal response.
3. The quality, viability, and suitability of the solution offered compared with the requirements and specifications of the RFP.
4. Bidder's qualifications, experience, and ability to meet the City's requirements as verified by proposal submittals.

5. The bidder's technical capability, expertise, or skill to provide the required services, including the bidder's past experience providing similar services.
6. Evaluation of the bidder's performance capabilities, reputation, reliability, and service history as determined by reference check and/or the City prior experience with the bidder.
7. Bidder's willingness and ability to meet the City's PSA requirements including, but not limited to, the City's insurance requirements.
8. Costs.

Attachments:

- A -Pest Control Services Facility List
- B - Professional Services Agreement

**CITY OF AUBURN
PEST CONTROL SERVICES
FACILITY LIST**

For each City facility, bidder must provide total monthly/annual cost for all labor, material and supplies (tax included) as specified in RFP.

| | Facility | Interior When Needed | Exterior | Frequency Suggested | Total Monthly Bid | Total Annual Bid |
|---------------------------------|---|-------------------------------------|-----------------|--------------------------------|----------------------------------|---------------------------------|
| A | City Hall 1225 Lincoln Way | X | X | Monthly | | |
| B | Auburn Police Department 1215 Lincoln Way | X | X | Monthly | | |
| C | Martin Park Fire Station 485 High St | X | X | Monthly | | |
| D | Maidu Fire Station 901 Auburn Folsom Rd | X | X | Monthly | | |
| E | Gietzen Fire Station 226 Sacramento St | X | X | Monthly | | |
| F | Auburn Airport 13626 New Airport Rd | X | X | Monthly | | |
| G | Corporation Yard 11500 Blocker Dr | X | X | Monthly | | |
| H | Old City Hall 1101 & 1103 High St | X | X | Monthly | | |
| I | Historic Carnegie Library 175 Almond St | X | X | Monthly | | |
| Total for All Facilities | | | | | | |

PROFESSIONAL SERVICES AGREEMENT(City of Auburn / **Company or Individual.**)**1. IDENTIFICATION**

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn a California municipal corporation ("City") and _____ *[enter consultant (company's) name]* a _____ *[insert consultant's state of incorporation]*, _____ *[enter consultant's legal status e.g., individual, partnership, corporation, nonprofit public benefit corporation, limited liability company]* ("Consultant").

2. RECITALS

- 2.1 City has determined that it requires the following professional services from a consultant: _____ *[insert description of consultant's services]*.
- 2.2 Consultant represents that it is fully qualified to perform such professional services by virtue of its experience and the training, education and expertise of its principals and employees. Consultant further represents that it is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

- 3.1 "Scope of Services": Such professional services as are set forth in Consultant's _____ *[enter consultant's proposal date]* proposal to City attached hereto as Exhibit A and incorporated herein by this reference.
- 3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Consultant's _____ *[insert date fee schedule submitted to City]* fee schedule to City attached hereto as Exhibit B and incorporated herein by this reference.
- 3.3 "Commencement Date": _____.
- 3.4 "Expiration Date": _____.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of

the parties or terminated earlier in accordance with Section 18 (“Termination”) below.

5. CONSULTANT’S SERVICES

- 5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of \$_____, _____ unless specifically approved in advance and in writing by City.
- 5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.
- 5.3 Consultant shall perform all work to the highest professional standards of Consultant’s profession and in a manner reasonably satisfactory to City. Consultant shall keep itself fully informed of and in compliance with all local, state, and federal laws, rules, and regulations in any manner affecting the performance of the Agreement, including all Cal/OSHA requirements, the conflict of interest provisions of Government Code Section 1090, and the Political Reform Act (Government Code Section 81000 *et seq.*).
- 5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant’s performance of such work.
- 5.5 Consultant represents that it has, or will secure at its own expense, all personnel required to perform the services identified in the Scope of Services. All such services shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such services. _____ ***[enter name of project administrator]*** shall be Consultant’s project administrator and shall have direct responsibility for management of Consultant’s performance under this Agreement. No change shall be made in Consultant’s project administrator without City’s prior written consent.
- 5.6 Consultant has represented to the City that key personnel will perform and coordinate the services under this Agreement. Should one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. If City and Consultant cannot agree as to the substitution of key personnel, City may terminate this Agreement for cause.
- 5.7 Consultant shall not be reimbursed for any expenses unless provided for in this Agreement or authorized in writing by City in advance.

6. COMPENSATION

- 6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.
- 6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.
- 6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule. Consultant shall be entitled to increase the fees in this fee schedule at such time as it increases its fees for its clients generally; provided, however, in no event shall Consultant be entitled to increase fees for services rendered before the thirtieth day after Consultant notifies City in writing of an increase in that fee schedule.

7. PREVAILING WAGES

Consultant is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Consultant shall defend, indemnify, and hold the City, its elected officials, officers, employees, and agents free and harmless from any claim or liability arising out of any failure or alleged failure of Consultant to comply with the Prevailing Wage Laws.

8. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

9. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that it is, or that any of its agents or employees are, in any manner employees of City.

Under no circumstances shall Consultant look to the City as his employer. Consultant

shall not be entitled to any benefits. City makes no representation as to the effect of this independent contractor relationship on Consultant's previously earned PERS retirement benefits, and Consultant specifically assumes the responsibility for making such a determination. Consultant shall be responsible for all reports and obligations including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation.

10. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

11. INDEMNIFICATION

- 11.1 The parties agree that City, its officers, agents, employees and volunteers should, to the fullest extent permitted by law, be protected from any and all loss, injury, damage, claim, lawsuit, cost, expense, attorneys' fees, litigation costs, taxes, or any other cost arising out of or in any way related to the performance of this Agreement. Accordingly, the provisions of this indemnity provision are intended by the parties to be interpreted and construed to provide the City with the fullest protection possible under the law. Consultant acknowledges that City would not enter into this Agreement in the absence of Consultant's commitment to indemnify and protect City as set forth herein.
- 11.2 To the fullest extent permitted by law, Consultant shall indemnify, hold harmless, and when the City requests with respect to a claim provide a deposit for the defense of, and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person, whether physical, emotional, consequential or otherwise, and injury to any property arising out of or in connection with Consultant's alleged negligence, recklessness or willful misconduct or other wrongful acts, errors or omissions of Consultant or any of its officers, employees, servants, agents, or subcontractors, or anyone directly or indirectly employed by either Consultant or its subcontractors, in the performance of this Agreement or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage as is caused by the sole active negligence or willful misconduct of the City. Such costs and expenses shall include reasonable attorneys' fees due to counsel of City's choice, expert fees and all other costs and fees of litigation.
- 11.3 City shall have the right to offset against any compensation due Consultant under this Agreement any amount due City from Consultant as a result of Consultant's failure to pay City promptly any indemnification arising under this Section 11 and any amount due City from Consultant arising from Consultant's failure either to

(i) pay taxes on amounts received pursuant to this Agreement or (ii) comply with applicable workers' compensation laws.

- 11.4 The obligations of Consultant under this Section 11 are not limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 11.5 Consultant agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this Section 11 from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations from others as required herein, Consultant agrees to be fully responsible and indemnify, hold harmless and defend City, its officers, agents, employees and volunteers from and against any and all claims and losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent, or otherwise wrongful acts, errors or omissions of Consultant's subcontractors or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice.
- 11.6 City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense.

12. INSURANCE

- 12.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:
- 12.1.1 Comprehensive General Liability Insurance with coverage limits of not less than One Million Dollars (\$1,000,000) including products and operations hazard, contractual insurance, broad form property damage, independent consultants, personal injury, underground hazard, and explosion and collapse hazard where applicable.
- 12.1.2 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Million Dollars (\$1,000,000) per claimant and One Million dollars (\$1,000,000) per incident.

- 12.1.3 Worker's Compensation insurance as required by the laws of the State of California.
- 12.1.4 Professional Errors and Omissions Insurance with coverage limits of not less than One Million Dollars (\$1,000,000).
- 12.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.
- 12.3 The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A:VII in the latest edition of Best's Insurance Guide.
- 12.4 Consultant agrees that if it does not keep the aforesaid insurance in full force and effect, City may either (i) immediately terminate this Agreement; or (ii) take out the necessary insurance and pay the premium thereon at Consultant's expense.
- 12.5 At all times during the term of this Agreement, Consultant shall maintain on file with City's Risk Manager a certificate or certificates of insurance showing that the aforesaid policies are in effect in the required amounts and naming the City and its officers, employees, agents and volunteers as additional insureds. Consultant shall, prior to commencement of work under this Agreement, file with City's Risk Manager such certificate(s).
- 12.6 Consultant shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Such proof will be furnished at least two weeks prior to the expiration of the coverages.
- 12.7 The general liability and automobile policies of insurance required by this Agreement shall contain an endorsement naming City and its officers, employees, agents and volunteers as additional insureds. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City. Consultant agrees to require its insurer to modify the certificates of insurance to delete any exculpatory wording stating that failure of the insurer to mail written notice of cancellation imposes no obligation, and to delete the word "endeavor" with regard to any notice provisions.
- 12.8 The insurance provided by Consultant shall be primary to any coverage available to City. Any insurance or self-insurance maintained by City and/or its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.
- 12.9 All insurance coverage provided pursuant to this Agreement shall not prohibit Consultant, and Consultant's employees, agents or subcontractors, from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of

subrogation against the City.

- 12.10 Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond in the amount of the deductible or self-insured retention to guarantee payment of losses and expenses.
- 12.11 Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duties to indemnify, hold harmless and defend under Section 11 of this Agreement.
- 12.2 Consultant shall report to the City, in addition to the Consultant's insurer, any and all insurance claims submitted to Consultant's insurer in connection with the services under the Agreement.

13. MUTUAL COOPERATION

- 13.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.
- 13.2 If any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

14. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

15. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, all permits and regulatory approvals necessary for Consultant's performance of this Agreement. This includes, but shall not be limited to, professional licenses, encroachment permits and building and safety permits and inspections.

16. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
1225 Lincoln Way
Auburn CA 95603
Telephone: (530) 823-4211 x____
Facsimile: (530) 823-4216

If to Consultant:

Name of Consultant
Street Address or P.O. Box
City, State Zip Code
Telephone: () ____-____
Facsimile: () ____-____

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono & Levin, P.C.
11364 Pleasant Valley Road
Penn Valley, CA 95946
Telephone: (530) 432-7357
Facsimile: (530) 432-7356

17. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 10, Section 11, Paragraph 13.2 and Section 14 of this Agreement shall survive the expiration or termination of this Agreement.

18. TERMINATION

18.1 City may terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant may terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

18.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

19. GENERAL PROVISIONS

- 19.1 Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. Consultant further agrees to file, or shall cause its employees or subcontractor to file, a Statement of Economic Interest with the City's Filing Officer if required under state law in the performance of the services. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer, or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.
- 19.2 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.
- 19.3 This Agreement shall be binding on the successors and assigns of the parties.
- 19.4 Except as expressly stated herein, there is no intended third party beneficiary of any right or obligation assumed by the parties.
- 19.5 Time is of the essence for each and every provision of this Agreement.
- 19.6 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.
- 19.7 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).
- 19.8 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term,

covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing signed by one authorized to bind the party asserted to have consented to the waiver.

- 19.9 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.
- 19.10 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. If legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action. The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.
- 19.11 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
- 19.12 This Agreement shall be governed and construed in accordance with the laws of the State of California.
- 19.13 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

“City”
City of Auburn

“Consultant”
Name of Company or Individual

By: _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Date: _____

By: _____
Name, Level of Officer e.g., Vice President

Date: _____

Attest:

By: _____
Deputy City Clerk

Date: _____

Approved as to form:

By: _____
Michael G. Colantuono, City Attorney

Date: _____